

1 BEFORE THE BOARD OF PERSONNEL APPEALS

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4  
ULP-12-1974

5 AMERICAN FEDERATION OF STATE, COUNTY,  
6 AND MUNICIPAL EMPLOYEES, AFL-CIO,  
7 Complainant,

FINDINGS OF FACT,  
CONCLUSIONS OF LAW,  
AND ORDER AS  
RECOMMENDED TO THE  
BOARD OF PERSONNEL  
APPEALS

8 -vs-

9 LOUIS J. BERTAGNA, TRANSIT DIRECTOR,  
10 CITY OF BILLINGS,  
11 Defendant.

12 A hearing was held November 21, 1975 before Peter D.  
13 Maltese, duly appointed hearing examiner of the Board of  
14 Personnel Appeals pursuant to an unfair labor practice  
15 complaint filed by the American Federation of State, County,  
16 and Municipal Employees, AFL-CIO (AFSCME).

17 The Complainant was represented by Stanley W. Berke,  
18 field representative of AFSCME. The Defendant was represented  
19 by Willis R. Jones, Esq., city attorney, Billings, Montana.

20 The issue in this case is whether or not the Defendant  
21 violated section 59-1605(1)(b), RSMont. 1972 by interfering  
22 with the administration of a labor organization.

23 Upon the entire record in this case, including my  
24 observation of the demeanor of the witnesses, and upon  
25 substantial, reliable evidence, I make the following

26 FINDINGS OF FACT

27 Louis J. Bertagna, the director of the transit department  
28 of the city of Billings, seized seven copies of a collective  
29 bargaining contract, negotiated between the Complainant and  
30 the city of Billings, from Elsie Kemper, a bus driver for the  
31 transit department and a member of AFSCME. The copies of the  
32 contract, which were delivered to Kemper for distribution to  
other AFSCME members, were printed at the Complainant's expense.

Bertagna seized the contract copies on September 1, 1974.

1 at approximately 10:55 a.m. while Kemper was off duty.  
2 Bertagna testified that he took the contract copies from  
3 Kemper to prevent her from distributing the copies to other  
4 city employees during working hours. After Bertagna had  
5 seized the contract copies, he kept them in his office.  
6 Kemper was informed that the contract copies were available  
7 in Bertagna's office but she did not retrieve them.

8 The contract copies remained in Bertagna's office until  
9 they were distributed to transit company employees by Bertagna  
10 at an employee meeting held on September 6, 1974.

11

#### 12 DISCUSSION

13 AFSCME contends that the defendant violated section  
14 59-1605(1)(b), R.C.R. 1947 by seizing AFSCME's contract  
15 copies from Kemper and by distributing those copies to  
16 AFSCME's members at an employee meeting. While I do not  
17 approve of the defendant's actions, I do not believe that  
18 they constitute an unfair labor practice.<sup>1</sup>

19 As stated in The Developing Labor Law, page 135 (Morris  
20 ed. 1971):

21 "The purpose of this provision [section 8(a)(2)  
22 of the Labor Management Relations Act] is to insure  
23 that an organization that purports to represent  
24 employees in collective bargaining will not be subject to control by an employer, or so dependent  
25 on his favor that it would be unable to give wholehearted effort to the employees it represents."

26 Bertagna's actions, in a very technical sense, did  
27 interfere with the administration of a labor organization.  
28 By distributing the contract copies to AFSCME members,  
29 Bertagna precluded AFSCME from distributing the contract.

30  
31  
32  
<sup>1</sup> Because section 59-1605(1)(b) is closely modeled after section 8(a)(2) of the Federal Labor Management Relations Act and because there are no precedents from the Board of Personnel Appeals to guide my deliberations, I have looked to precedents of the National Labor Relations Board for guidance.

1 copies to its members. But Bertagna's actions were so  
2 trivial that they did not affect what section 59-1605(1)(b)  
3 essentially protects; that is the employee's freedom of choice.  
4 Only when the public employer actually interferes with the  
5 functioning of a labor organization and thereby undermines  
6 its independence and integrity will a violation of section  
7 59-1605(1)(b) be found--and that has not been established  
8 by the Complainant. Federal-Mogul Corporation, Colowater  
9 Distribution Center Division v. NLRB, 394 F.2d 915, 916  
10 16th Cir., 1968); Modern Plastics Corporation v. NLRB, 379  
11 F.2d 201, 204 (6th Cir., 1967).

12  
13 CONCLUSION OF LAW

14 The Defendant did not violate section 59-1605(1)(b),  
15 E.C.R. 1947.

16 ORDER

17 The complaint of the American Federation of State,  
18 County, and Municipal Employees, AFL-CIO is dismissed.  
19 Dated this 30th day of January, 1975.

20  
21 Peter O. Maltete

22  
23 Peter O. Maltete, Esq.  
24 Hearing Examiner

25 CERTIFICATE OF MAILING

26 I hereby certify that I mailed a true copy of the above  
27 Findings of Fact, Conclusions of Law, and Order as Recommended  
28 to the Board of Personnel Appeals to:

29  
30 Patrick F. Hooks, Esq.  
31 Chairman, Board of Personnel Appeals  
32 218 Broadway  
Townsend, MT 59644